

SITING COMMITTEE S RATIONALE
For Development of
EMERGENCY REGULATIONS
To Implement the
SIX-MONTH POWER PLANT LICENSING PROCESS
(October 25, 2000)

Introduction

In response to recent legislative action, the Siting Committee has developed the attached emergency regulations to implement a six-month power plant licensing process. The emergency regulations will be considered for adoption by the Energy Commission at its November 8, 2000 business meeting. Following is a brief description of the legislative action, the Committee s response, and a discussion of the rationale used by the Committee in developing its proposed emergency regulations.

In recognition that California faces potentially serious electricity shortages over the next few years, on August 31, 2000 the Legislature passed Assembly Bill 970, the California Energy Security and Reliability Act of 2000 (Act). Governor Davis signed the Act into law on September 6, 2000. The purpose of the Act is to provide a balanced response to the electricity problems facing the state that will result in significant new investments in new, environmentally superior electricity generation, while also making significant new investments in conservation and demand-side management programs in order to meet the energy needs of the state for the next several years.

Section 25550 (a) of the Act directs the Energy Commission to establish a process to issue its final certification for any thermal power plant and related facilities within six months after the filing of an application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws. The Act also grants the Commission the authority to adopt emergency regulations to implement the six-month power plant certification process.

Committee Response

In response to the Act, the Committee directed the staff to prepare draft emergency regulations. The Committee conducted a hearing on October 12, 2000, at which it received comments on the draft emergency regulations from project developers, municipal utility associations, consultants, and members of the public.

The comments received at the hearing represented differing views regarding the implementation of Section 25550 as reflected in the draft emergency regulations. The range of issues included the scope of application filing requirements, the level of financial risk to be assumed by applicants at the time of filing, the criteria to be used to identify environmentally superior electricity generation, the procedural requirements and timeframes, and the extent to which the proposed emergency regulations would facilitate or hinder public participation.

Committee Rationale

The proposed emergency regulations specify the information filing requirements for an application, as authorized by Section 25550 (b) and (l), and describe the procedures to be followed in carrying out the six-month licensing process. The Committee's basic objective in developing the regulations was to define a licensing process that can be accomplished in six months while meeting legal mandates and facilitating informed public participation. The Committee felt strongly that it was important to structure the regulations, where possible, to give the Commission the ability to use its discretion in carrying out the licensing process rather than to rely only on strict regulatory requirements.

The proposed regulations would require a sufficient level of information in the application for the Commission to make an informed judgement at the time of filing that there is substantial evidence the project will not cause a significant [unmitigated] adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws. [Pub. Resources Code /25550 (a).] The Committee also wanted to assure that specific information is provided in the application that is critical to a timely review and licensing of the project in six months. At the same time, the Committee attempted to limit the information required for filing to what is needed to comply with the Act.

The Committee also decided that the expedited process should allow any applicant with an eligible project, i.e., one accepted for expedited review, to demonstrate that the project will meet the standards of Section 25550 (a). Thus, no one design or type of proposal is recognized as necessarily superior for purposes of receiving priority in review at the time of filing. Nevertheless, consistent with the Act [Pub Resources Code/25550 (e)], the Committee included in the proposed emergency regulations the directive that . . . the Commission shall give priority in review to applications that qualify for an expedited decision . . . and demonstrate superiority with respect to environmental protection or efficiency in performance.

FAST TRACK EMERGENCY REGULATIONS

October 25, 2000

Title 20, California Code of Regulations
Division 2 — State Energy Resources Conservation and Development Commission

Chapter 5 — Site Certification

Article 7 (new) — Additional Provisions for Considering Expedited Applications Under
Public Resources Code Section 25550

SECTION 2021. PURPOSE OF EXPEDITED PROCEEDING; APPLICABILITY OF REGULATIONS.

- (a) The purpose of a six-month application proceeding is to review and certify environmentally acceptable sites and related facilities as expeditiously as possible so as to ensure a reliable supply of electrical energy in a manner consistent with public health and safety, promotion of the general welfare, and protection of the environment. Toward that end, the commission shall give priority in review to applications that qualify for an expedited decision under this Article and demonstrate superiority with respect to environmental protection or efficiency in performance.
- (b) The provisions of this section apply to all applications filed pursuant to Public Resources Code section 25550, notwithstanding any other provision to the contrary in Chapters 1, 2, and 5. This section changes the otherwise applicable deadline for a final decision on an application for certification and adjusts other procedural deadlines as appropriate. This section does not modify any substantive or other procedural requirements applicable to an application proceeding.

Section 2022. Information Requirements

- (a) Any applicant requesting that the commission reach a decision on an application for certification within six months after acceptance of the application shall meet the requirements of this section.
- (b) To be eligible for a decision within six months after acceptance of an application, the application shall contain all of the information that is relevant to the project and required in Appendix B to this Chapter. If an information requirement in Appendix B is not relevant to a proposed project because of its design, location, or other particular circumstance, the application need not provide the information and, instead, shall provide an explanation with specific facts as to why the requirement is not relevant to the project as proposed. Applicants are encouraged to request a prefiling review pursuant to section 1709.5 to determine the extent to which documentation relevant to a proposed

application is sufficient to meet the information requirements in Appendix B and to determine which information requirements, if not all, are relevant to the proposed application. The application shall also contain all of the following:

- (1) Substantial evidence that the project as proposed in the application will comply with all standards, ordinances, and laws applicable at the time of certification, including:
 - (A) a list of all such standards, ordinances, and laws;
 - (B) information demonstrating that the project as proposed in the application will comply with all such standards, ordinances, and laws;
 - (C) where a standard, ordinance, or law is expected to change between the time of filing an application and certification, information from the responsible jurisdiction documenting the impending change, the schedule for enactment of the change, and whether the proposed project will comply with the changed standard, ordinance, or law; and
 - (D) a list of the requirements for permitting by each federal, state, regional, and local agency that has jurisdiction over the proposed project or that would have jurisdiction, but for the exclusive jurisdiction of the commission, and the information necessary to meet those requirements;
- (2) substantial evidence that the project as proposed in the application will not cause a significant adverse impact on the environment, including all the following:
 - (A) a detailed modeling analysis assessing whether the cumulative impacts of all inert criteria pollutants (NO_x, SO₂, CO, and PM₁₀) from the project's typical operating mode in combination with all stationary emissions sources within a six-mile radius of the proposed site that have received construction permits, but are not yet operational, and all stationary emissions sources that are currently undergoing air district permit application review will cause or contribute to a violation of any ambient air quality standard;
 - (B) a description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the consistent production of electricity for sale to the market, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be

used during such tests, and air dispersion modeling analyses of the impacts of those emissions on state and federal ambient air quality standards for NO₂, SO₂, CO, and PM₁₀;

- (C) a demonstration that the applicant owns, or has a binding option to own, all air emission offsets that fully satisfy the applicable air district's requirements under its new source review rule;
- (D) a detailed description of the mitigation, which an applicant shall propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule;
- (E) a modeling analysis that identifies the extent of potential public exposure to toxic substances, as identified in subsection (g)(9)(A) of Appendix B, resulting from normal facility operation;
- (F) if the project will result in a discharge of waste that could affect the water quality of the state, a complete report of proposed waste discharge as required by section 13260 of the Water Code that allows for issuance of waste discharge requirements by the appropriate regional water quality control board within 100 days after the filing of the application;
- (G) a demonstration, based on appropriate data including, but not limited to, scientific surveys taken at the appropriate time of year, that the project will have no significant impact on wetlands, plant or animal species that are endangered, threatened, or of concern under state or federal law, or the areas listed in Public Resources Code section 25527;
- (H) with respect to the handling of hazardous materials, a demonstration that:
 - (i) the project will not use or store any regulated substance defined in Section 25532(g) of the California Health and Safety Code or
 - (ii) the project is eligible for Program 1 status pursuant to Section 68.10 of Part 68 of Title 40 of the Code of Federal Regulations and
 - (iii) no regulated substances will be used or stored at the project site in a liquefied gas form;

- (I) if the project will store or use a regulated substance defined in Section 25532(g) of the Health and Safety Code, a demonstration either that the boundary of the powerplant site will not be within 1000 feet of any residential area, school, general acute care hospital, long-term health care facility, or child day care facility as such terms are defined in section 25534.1 of the Health and Safety Code or that the project will pose no plausible potential for exposure at such facilities from an accidental release of the regulated substance; and
 - (J) a demonstration that the proposed facility will not require storage of gaseous flammable or explosive materials in quantities greater than 25000 standard cubic feet;
- (3) substantial evidence that the project will not cause a significant adverse impact on the electrical system, including all of the following:
 - (A) an Interconnection Study identifying the electrical system impacts and a discussion of the mitigation measures considered and those proposed to maintain conformance with NERC, WSCC, Cal-ISO or other applicable reliability or planning criteria based on load flow, post transient, transient, and fault current studies performed by or for the transmission owner in accordance with all applicable Cal-ISO or other interconnection authority s tariffs, operating agreements, and scheduling protocols and
 - (B) a full description of the facilities, if any, that are required for interconnection, including all such facilities beyond the point where the outlet line joins with the interconnected system and a full description of the environmental setting, environmental impacts, and any recommended mitigation measures proposed by the applicant for any required facilities beyond the point where the outlet line joins with the interconnected system;
- (4) a discussion of the potential for disproportionate impacts from the project on minority or low-income people; such discussion shall include, but not be limited to, all of the following:
 - (A) demographic information by census tract, based on the most recent census data available, showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site;
 - (B) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and

significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and

- (C) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site;
- (5) the following information to demonstrate that the project, if certified, is likely to be constructed and operated;
 - (A) information demonstrating the applicant's control, by ownership, lease, option, or other legally binding agreement that the Commission finds acceptable, of the proposed site and
 - (B) a will-serve letter or similar document from each provider of water to the project, indicating each provider's willingness to provide water to the project and describing all conditions under which the water will be provided, and a discussion of all other contractual agreements with the applicant pertaining to the provision of water to the project.

Section 2023. Data Adequacy Review and Acceptance.

- (a) Upon the receipt of an application filed pursuant to this Article, the executive director or a delegatee shall review all documentation to determine whether the application contains all the information required by section 2022 and is, therefore, complete. Except as provided by this section the review of the application for completeness shall be in accordance with section 1709.
- (b) No later than 45 days after receipt of an application, the commission shall act upon the executive director's recommendation as to whether the application contains the information required by section 2022 and is, therefore, complete. If the commission determines that the application is complete, the application shall be accepted as of that date and the proceeding for reaching a final decision within six months shall begin. Based on meeting the information requirements of section 2022, the application shall be considered to be an initial showing that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, and laws.
- (c) If the commission determines that the application contains all of the information required by Appendix B to this Chapter, but not all of the additional information required by section 2022, the application shall be deemed

accepted for purposes of reaching a final decision within 12 months. The applicant, however, may request an immediate suspension at the time of acceptance for a 12-month decision to allow for the submittal of additional information to meet the requirements of section 2022(b)(1) through (5). If the applicant makes such a request, the commission shall specify in writing what information is needed to complete the application for a six-month decision.

- (d) If the commission determines that the application is incomplete with respect to Appendix B to this Chapter, the application shall not be accepted. The commission shall indicate in writing those parts of the application that fail to meet the information requirements and the manner in which they can be made complete.
- (e) The applicant may file additional information and the commission, in accordance with section 1709, shall determine, within 30 days of receipt of the data, whether the information is sufficient to complete the application. The application shall be eligible for a final decision within six months from the day the commission determines that the application is complete pursuant to section 2022.

Section 2024. Intervention

Any person may file a petition to intervene within 100 days after the acceptance of an application. The petition shall be served upon all parties.

Section 2025. Discovery.

Within 90 days after acceptance of the application, any party may file a data request of the applicant or of any other party. Absent an objection pursuant to section 1716(f), the applicant or other party shall provide the information requested within 20 days of the date that the request is made or by another date agreed to by the requesting and responding parties or ordered by the committee.

Section 2026. Agency Comments.

- (a) Within 60 days after the acceptance of an application under this Article, the California Independent System Operator or other interconnecting authority and all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their preliminary approval, comments, determinations, and opinions.
- (b) Within 100 days after the acceptance of an application, all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their final comments, determinations, and opinions.

Section 2027. Staff Reports

- (a) Within 75 days after acceptance of an application that is eligible for a six-month decision, the staff shall file an initial report of the environmental impacts and other aspects of the proposed project in accordance with sections 1742.5, 1743, and 1744. Based on information known and available to the staff, the staff's initial report shall:
 - (1) discuss whether the project complies with all applicable standards, ordinances, and laws,
 - (2) identify and assess the impacts that may result from the project on the environment,
 - (3) identify and assess the impacts that may result from the project on the electrical system,
 - (4) assess the sufficiency of the mitigation as proposed by the applicant,
 - (5) recommend mitigation where the staff believes it is needed in addition to or as an alternative to that proposed by the applicant,
 - (6) discuss the feasibility of available site and/or facility alternatives that substantially lessen the significant adverse impacts of the project on the environment, and
 - (7) identify the areas in need of further analysis that will be the focus of the final staff report on the project.
- (b) Within 120 days after the acceptance of an application, the staff shall file a final report on the proposed project in accordance with sections 1742.5, 1743, and 1744. The staff's final report may focus on those areas identified for further analysis in the staff's initial report and may incorporate by reference or otherwise rely on the initial report for all other areas. The report shall serve as the staff's final assessment of the project and be presented as testimony at the hearings under section 2029.

Section 2028. Removal of the Project from the Six-Month Process.

- (a) At any time after acceptance of the application, but no later than the final date for filing testimony, any party may petition the committee to remove the project from the provisions of this Article and thereby change the deadline for a commission decision from six months after acceptance to twelve months after acceptance. The petition shall show that there is substantial evidence in the record that the project:

- (1) may result in a significant adverse unmitigated impact on the environment;
- (2) may result in a significant adverse unmitigated impact on the electrical system;
- (3) will not comply with an applicable standard, ordinance, or law; or
- (4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.

The petition shall be served on all parties.

- (b) Any person, or if the petition is filed more than 100 days after acceptance of the application, any party, may comment on the petition in writing within 10 days after the petition is served.
- (c) Within 20 days after filing of the petition, the committee shall determine whether there is substantial evidence in the record that the project:
 - (1) may result in a significant adverse unmitigated impact on the environment;
 - (2) may result in a significant adverse unmitigated impact on the electrical system;
 - (3) will not comply with an applicable standard, ordinance, or law; or
 - (4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.
- (d) If the committee's determination with respect to subsection (1), (2), or (3) is in the affirmative, the committee shall grant the petition and order that the application shall no longer be reviewed under this Article and that a final decision on the application shall be reached within 12 months of acceptance of the application in accordance with Public Resources Code section 25540.6.
- (e) If the committee's determination with respect to subsection (4) is in the affirmative, the committee may, but need not, grant the petition.
- (f) The committee's grant or denial shall be effective 5 days after it is filed in the Docket and served on all parties, unless it is appealed under subsection (g), in which case the ruling is stayed until the Commission rules on it.

- (g) Any party may appeal the committee's ruling within 5 days after it is filed in the Docket and served on all parties. The commission shall rule on an appeal at the next earliest business meeting for which there is sufficient time for public notice of the appeal as an item on the agenda. In ruling on the appeal the commission shall use the criteria in subsection (c).
- (h) The time between a committee ruling on a petition and final commission disposition of the matter shall not be counted in the calculation of any deadlines pursuant to this Article.

Section 2029. Hearings.

- (a) Within 135 days after acceptance of the application, the committee shall commence evidentiary hearings.
- (b) Any party may submit testimony in accordance with a schedule determined by the committee.

Section 2030. Presiding Member's Proposed Decision; Commission Decision.

- (a) Within 20 days after the end of the hearings held under section 2029, the presiding member of the committee shall, in consultation with the other committee member, file in the Docket and serve on all parties a proposed decision in accordance with sections 1749, 1751, 1752(b) through (k) and (m), 1752.3(a) and (b), and 1752.5.
- (b) Within 15 days after filing and service of the presiding member's proposed decision, any person may file and serve written comments.
- (c) At least 30 days after filing and service of the presiding member's proposed decision, the commission shall hold a hearing and do one of the following:
 - (1) grant a certificate to the project,
 - (2) deny the application for certification, or
 - (3) determine, using the criteria in Section 2028(c), that a final decision on the application shall be made within twelve months of its acceptance.
- (d) The Commission shall not grant a certificate unless it finds that:
 - (1) the project will not cause a significant adverse unmitigated impact on the environment,

- (2) the project will not cause a significant adverse unmitigated impact on the electric system,
- (3) the project will comply with all applicable standards, ordinances, and laws,
- (4) the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the project, and
- (5) the project complies with all regulations adopted by the Commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

Section 2031. Construction Deadline.

- (a) The deadline for the commencement of substantial construction of the project shall be 12 months after the effective date of the decision on an application accepted and processed pursuant to this Article.
- (b) Substantial construction shall be defined as the following:
 - (1) completion of at least thirty percent of the engineering design of the entire project and
 - (2) completion of at least five percent of the physical construction of the entire project, absent circumstances beyond the control of the applicant.